

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

BY: R. Smith IN THE GENERAL COURT OF JUSTICE
BEFORE THE CLERK
16-SP-3875

IN THE MATTER OF THE PROPOSED
FORECLOSURE OF CLAIM OF LIEN FILED
CALMORE GEORGE AND HYGIENA JENNIFER
GEORGE BY THE CROSSING COMMUNITY
ASSOCIATION, INC. DATED AUGUST 22, 2016
RECORDED IN DOCKET NUMBER 16-M-6465
IN THE OFFICE OF THE CLERK OF COURT
OF SUPERIOR COURT FOR MECKLENBURG
REGISTRY BY SELLERS, AYERS, DORTCH

**ORDER GRANTING
RESTITUTION AND
ATTORNEY FEES**

THIS MATTER coming before the Court upon review of the file, briefs, hearing transcript, and arguments of counsel; and after considering relevant case law, the Court makes the following findings and conclusions:

Findings of Fact and Conclusions of Law

1. The decision in *In Re George*, 878 S.E. 2d 836 (N.C. App. 2022), remanded this case to the Mecklenburg County Superior Court for it to decide the amount of restitution and attorneys' fees. That decision references *In re Ackah*, 255 N.C. App 284 (N.C. App. 2017), as the court in that case determined how N.C.G.S. §1-108 authorizes the court to compel restitution. In *Ackah*, the HOA failed to provide actual notice to the debtor/homeowner, although the HOA had provided "constitutional notice". Also, the HOA was not the party that appealed the trial court's Rule 60 order, but the appellant was the purchaser of the property through foreclosure proceedings.

In *Ackah*, the HOA was required to pay the restitution. However, the purchaser of the property after the foreclosure sale was not required to pay the restitution because the purchaser was a "good faith" purchaser.

In this case, The Crossings, through the trustee, failed to provide sufficient notice. Additionally, KPC and National, as the purchasers, were deemed "bad faith" purchasers by the trial court and appellate court. Even though The Crossings Community Association, Inc. did not appeal the Rule 60 decision, this court is not prohibited from including them along with the other parties when allocating obligations of payment for the restitution.

2. The Georges owned the property free and clear of any mortgage or encumbrances aside from the outstanding HOA dues and fees owed prior to the

initiation of the foreclosure action. Prior to the foreclosure action, the Georges' daughter, Jeanine, was residing in the property. The Georges, including Jeanine, was not renting out the property to another, and there is no evidence that renting out the property was their intent over the period of time that the Georges were not in actual possession of their property from February 3, 2017 – May 18, 2021. As Jeanine is not a party to this action, and there is no evidence that the Georges paid her rental expenses, those expenses are not considered as part of the restitution.

3. The Georges spent \$17,890.23 to repair the property so that Jeanine could move back into the property.
4. Attorney James Galvin, and his firm, began representing the Georges on or about April 6, 2017 in connection with their claims against The Crossings Community Association, Inc. in regard to the wrongful foreclosure of their property.
5. The Crossing Community Association was represented in the initial Rule 60 hearing on July 17, 2017 by Attorney Mark Gott, who was the trustee at the time.
6. KPC and National Indemnity appealed the initial Rule 60 decision and were directly involved in all subsequent appellate decisions and this remand currently, whereas The Crossings Community Association, Inc. was not.
7. Ultimately, per N.C.G.S. § 47F-3-116(g), the Georges are the prevailing party from the most recent appellate judgment regarding the judicial foreclosure of their property.
8. Since the retainment of Mr. Galvin and his firm, the Georges have been assessed \$57,225.20 in attorneys' fees and \$967.39 in costs. The Georges incurred attorneys' fees and costs in the amount of \$6956.75 up to and as a result of the Rule 60 hearing conducted on July 17, 2017. All other attorney's fees and costs were incurred after that hearing and as a result of the remand hearing before this court.
9. The attorneys' fees and costs are reasonable considering the experience of Mr. Galvin, the rate of his attorneys' fees which were reduced to assist the Georges and are fair considering his level of experience and the Charlotte market, the amount of time expended representing the Georges through various levels of legal processes, and the complexity of the legal issues.

It is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. **Restitution:** The Court hereby orders **The Crossings Community Association, Inc., KPC Holdings, and National Indemnity Group** to pay restitution to **Calmore George and Hygiena Jennifer George** in the amount of **\$17,890.23**, to be paid in a joint and severable manner.
2. **KPC Holdings and National Indemnity Group** are hereby ordered to pay to **Calmore George and Hygiena Jennifer George** attorney's fees and costs in the amount of **\$51,235.84**, to be paid in a joint and severable manner.
3. **The Crossings Community Association, Inc., KPC Holdings, and National Indemnity Group** are hereby ordered to pay to **Calmore George and Hygiena Jennifer George** attorney's fees and costs in the amount of **\$6,956.75**, to be paid in a joint and severable manner.
4. The restitution and attorney's fees and costs shall be paid by the named parties to **Calmore George and Hygiena Jennifer George** within **ninety (90) days** of the filing of this final order, or at a time that is mutually agreed upon by all parties. Any such agreement shall be memorialized in writing and, upon submission, signed by the undersigned Judge to become an official order.

10/7/2024 10:04:40 AM

SO ORDERED, this the __ day of ____, 2024.



Hon. Donald Cureton Jr.
Superior Court Judge Presiding